

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**HELEN KAY AYERS**  
Claimant

VS.

**HALLMARK CARDS, INC.**  
Respondent  
Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket Nos. 247,852  
and 259,740

**ORDER NUNC PRO TUNC**

Claimant appeals the May 21, 2001, Order of Administrative Law Judge Julie A. N. Sample. Claimant was denied a requested independent medical examination pursuant to K.S.A. 44-516 after the Administrative Law Judge found claimant was merely trying to avoid the expense of proving her own case. Stacy Parkinson has been appointed Board Member Pro Tem in place of Board Member David Shufelt, who has disqualified himself from participating in this matter.

**ISSUES**

Did the Administrative Law Judge abuse her discretion by twice refusing claimant a hearing on claimant's motion to appoint a neutral physician pursuant to K.S.A. 44-516?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant alleges the Administrative Law Judge twice abused her discretion by refusing to hear claimant's Motion For Appointment Of Neutral Physician pursuant to K.S.A. 44-516. In her Order of May 21, 2001, the Administrative Law Judge noted that there was only one functional impairment rating present at the time and that claimant had

not alleged that she was not at maximum medical improvement. The Administrative Law Judge went on to find that claimant's counsel had hoped, by citing K.S.A. 44-516, to require respondent's insurance carrier to bear the cost of a second impairment rating without claimant having to bear any expense. The Administrative Law Judge found this attempt by claimant to be inappropriate and denied claimant's motion.

This hearing took place at the time of the pre-hearing settlement conference and not as a result of a preliminary hearing notice filed by claimant's attorney. It is, therefore, an interlocutory order, rather than one stemming from a preliminary hearing pursuant to K.S.A. 44-534a.

K.S.A. 44-551(b)(1) allows appeals to the Board from all "final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge . . . upon written request of any interested party within 10 days."

The Board has held on many occasions it does not have jurisdiction over interlocutory orders which do not meet the criteria of K.S.A. 44-551 or K.S.A. 44-534a.

Additionally, K.S.A. 44-516 states:

In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, "**may**" employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination. (Emphasis added.)

The legislature intended an examination under K.S.A. 44-516 to be at the discretion of the Director or, in this case, the Administrative Law Judge. There is nothing in the statute requiring that such an examination be ordered. The Appeals Board finds the Administrative Law Judge did not exceed her jurisdiction in denying claimant's motion. The Appeals Board also finds it does not have jurisdiction at this proceeding to consider claimant's appeal of Administrative Law Judge Sample's interlocutory order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Julie A. N. Sample dated May 21, 2001, remains in full force and effect and the appeal of claimant from that Order is, hereby, dismissed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 2001.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Frank D. Taff, Topeka, KS  
Gregory D. Worth, Lenexa, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director